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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,511	05/19/2004	Tadd E. Vanyo	RA 5566 (33012/373/101)	7139

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EXAMINER	
HOFFLER, RAHEEM	

ART UNIT	PAPER NUMBER
2155	

MAIL DATE	DELIVERY MODE
09/20/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/849,511	VANYO ET AL.
	Examiner	Art Unit
	RAHEEM HOFFLER	2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *16-21* is/are allowed.

6)☐ Claim(s) *1,3,6-8,10,11 & 13-15* is/are rejected.

7)☒ Claim(s) *2,4,5,9 and 12* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)	
1) ☐ Notice of References Cited (PTO-892)	4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) ☐ Notice of Informal Patent Application
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	6) ☐ Other: _____.

Detailed Action

Remarks

The Office Action has been issued in response to BPAI Decision in which the Examiner has been Affirmed-in-Part filed 28 April 2011. Claims 1-21 are pending. As a result of the board's decision, the provisional nonstatutory obviousness-type double patenting rejection of Claims 1, 3, 8, 10 and 13-15 has been maintained, pending approval of a Terminal Disclaimer. The rejection of Claims 6, 7 & 11 under 35 USC 112, 2nd paragraph has been maintained as well. The rejection of Claim 16 under 35 USC 112, 2nd paragraph has been reversed, as well as the rejection of Claims 1-21 under 35 USC 102(b). Accordingly, this action has been made Non-FINAL.

Allowable Subject Matter

Claims 16-21 are allowed.

Claims 2, 4, 5, 9 & 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude"

granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 8, 10, and 13-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 8, 10, 12, 14 and 15 of copending Application No. 10849473 (Vanyo et al) in view of sharing a common Inventors and Assignees. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Claim 1 of U.S. PG Pub No. 20050262157	**Claim 1 of this application**
An apparatus comprising:	An apparatus comprising:
A user terminal which generates a first service request,	A user terminal which generates a user request,

A publicly accessible digital data communication network responsively coupled to said user terminal,	A publicly accessible digital data communication network responsively coupled to said user terminal,
A legacy data base management system responsively coupled to said user terminal via said publicly accessible digital data communication network which receives said first service request,	A legacy data base management system having access to at least one data base responsively coupled to said user terminal via said publicly accessible digital data communication network, and
A legacy data base incompatible with, but responsively coupled to, said data base management system, and A facility responsively coupled to said legacy data base management system and said legacy data base which permits said legacy data base management system to access said legacy data base in response to said receipt of said first service request.	a stored procedure having a sequence of command script statements responsively coupled to said legacy data base management system which is executed in response to said user request.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Note the comparison above, Claim 1 of U.S. PG Pub No. 10849473 teaches of An apparatus comprising a user terminal which generates a first service request, a publicly accessible digital data communication network responsively coupled to said user terminal, a legacy data base management system responsively coupled to said user terminal via said publicly accessible digital data communication network which receives said first service request, a legacy data base incompatible with, but responsively coupled to, said data base management system and a facility responsively coupled to said legacy data base management system and said legacy data base which permits said legacy data base management system to access said legacy data base in response to said receipt of said first service request. Claim 1 of this application claims a number of elements that are commonly shared by U.S. PG Pub No. 10849473. This application differs in that it teaches of a stored procedure having a sequence of command script statements responsively coupled to said legacy data base management system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to remove the legacy database taught by Vanyo et al and include a sequence of command script statements responsively coupled to said legacy database management system executed in response to said user request because of the opportunity to define, initialize, and execute stored procedures.

Depending claims 2, 4-5, 7, 9, 12, and 17-20 further limit the claims made by this application that are not met by U.S. PG Pub No. 10849473. For example,

claim 4 of this application recites the limitation "The apparatus ... wherein said at least one data base further comprises an OLEDB data base."

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6, 7 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, the clause "said publicly accessible digital data base management system" references to other items in the claim. It is unclear what item is being referenced by the clause.

In claim 7, the clause "said command language script" references to other items in the claim. It is unclear what item is being referenced by the clause.

Claim 11 is vague and indefinite because the steps in the body of the claim recite the limitation of "means for..." which has been reasonably construed as the attempt by Applicant to invoke 35 U.S.C. 112, sixth paragraph.

However, the metes and bounds of the claim have not been specifically defined for the limitation of "means for..." in the specification.

The instant disclosure does not define the structures necessary for each "means for 35 U.S.C. 112, sixth paragraph states that a claim limitation expressed in means-plus-function language "shall be construed to cover the corresponding structure...described in the specification and equivalents thereof."

"If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112." In re Donaldson Co., 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (in banc). (See MPEP 2181 [R-2]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAHEEM HOFFLER whose telephone number is (571)270-1036. The examiner can normally be reached on Tuesday-Friday: 10:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rehana Perveen can be reached on 571-272-3676. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. H./
Examiner, Art Unit 2155
8/9/2011

/Rehana Perveen/
Supervisory Patent Examiner, Art Unit 2155